



September 23, 2002

Ms. Ruth Reyes
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-5342

Dear Ms. Reyes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169091.

The El Paso Police Department (the "department") received a request for police reports and tape recordings related to five specified cases. You advise that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the investigations in case numbers 02-159097, 02-154005, and 02-132987 are presently active and ongoing, and that release of the information would therefore interfere with law enforcement and prosecution. Based on your representations, we conclude that the release of the submitted reports and tape recordings in these cases "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *Houston*

Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978). Thus, you may withhold these cases under section 552.108. While section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime under section 552.108(c), you state that you have released basic information relating to case numbers 02-159097, 02-154005, and 02-139287.

With regard to the remaining information, you state that you have redacted Texas license plate, driver's license, and vehicle identification numbers in case numbers 02-166071 and 02-139008 pursuant to section 552.130. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. However, pursuant to section 552.023, the requestor has a special right of access to her own information that is normally protected under section 552.130. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy). Therefore, you may not withhold the license plate or vehicle identification number of the requestor's vehicle contained in case number 02-166071 under section 552.130, and it must be released. We agree that you must withhold the driver's license numbers contained in case numbers 02-166071 and 02-139008 under section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

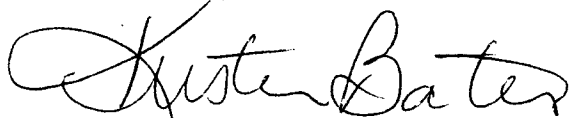
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 169091

Enc. Submitted documents

c: Ms. Maria Mendoza
9556 Blue Wing
El Paso, Texas 79924
(w/o enclosures)